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4 Attorney for Nintendo of America Inc.  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 In re DMCA Subpoena to Discord Inc.

MISC. CASE NO. 3:25-mc-80094

**DECLARATION OF JAMES D.  
BERKLEY IN SUPPORT OF DMCA  
SUBPOENA TO DISCORD INC.  
PURSUANT TO 17 U.S.C. § 512(H)**

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17 I, James D. Berkley, declare as follows:  
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19 1. I am an attorney at law, duly licensed to practice law in the State of California and  
20 before this Court. I am employed as Special Counsel at the law firm Mitchell Silberberg &  
21 Knupp, LLP (“MSK”). MSK is counsel for Nintendo of America Inc. (“NOA”). NOA’s exclusive  
22 rights under copyright include, without limitation, copyright-protected artwork, source code,  
23 characters, and other materials related to the famous Pokémon franchise, including but not limited  
24 to videogames developed in connection with the Pokémon franchise, such as the videogame  
25 *Pokémon Legends: Arceus* (the “Pokémon Game Materials”).

26 2. MSK is authorized to act on NOA’s behalf in the protection of copyrights and/or  
27 exclusive rights possessed by NOA pertaining to the Pokémon Game Materials.  
28



# **EXHIBIT 1**



MITCHELL SILBERBERG & KNUPP LLP  
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

James D. Berkley  
A Professional Corporation  
(310) 312-3717 Phone  
(310) 312-3100 Fax  
jdb@msk.com

April 18, 2025

**VIA E-MAIL ONLY (COPYRIGHT@DISCORD.COM)**

Copyright Agent  
Discord Inc.  
Attention: DMCA Takedown Request  
444 De Haro Street #200  
San Francisco, CA 94107

Re: **Notice of Infringement Submitted Pursuant to 17 U.S.C. Section 512**

To Whom It May Concern:

I submit to you the following statement pursuant to section 512 of Title 17 of the U.S. Code and inform you that Mitchell Silberberg & Knupp LLP is authorized to act on behalf of Nintendo of America Inc. (“Nintendo”). Nintendo owns exclusive rights in and to copyright-protected artwork, characters, source code, and other materials related to the famous Pokémon franchise, including but not limited to videogames developed in connection with the Pokémon franchise, such as the videogame *Pokémon Legends: Arceus* (collectively, the “Pokémon Game Materials”).

It has come to our attention that materials infringing the Pokémon Game Materials, including confidential materials unreleased to the public, have been made available by the Discord user “GameFreakOUT” (ID: 1294732540057227357) in the Discord server “FreakLeak” (server ID: 1294765091828535430, hereinafter the “Infringing Server”). An example of posts by this user sharing infringing Pokémon Game Materials is shown—with confidential information redacted—in the attached Exhibit A and includes the materials identified below:

- Server ID: 1294765091828535430
- Channel ID: 1297281750921121873
- Message ID: 1296664146976309349
- File ID: 1294765091828535433

We request that Discord take expeditious action to ensure the removal or disabling of access to the materials referenced above, as well as any other materials infringing the Pokémon Game Materials available on the Infringing Server. Additionally, we request that Discord take appropriate measures to prevent further infringements by the user in question, and any other parties responsible for the infringement, including pursuant to Discord’s Terms of Service and any “repeat infringer” policies maintained by Discord.



Copyright Agent  
Discord, Inc.  
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I hereby state that I have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law. Additionally, I hereby state that the information in this notification is accurate, and under penalty of perjury, that I am the owner, or an agent authorized to act on behalf of the owner, of an exclusive right that is being infringed.

We appreciate your cooperation in this matter.

All of our client's rights are expressly reserved.

Sincerely,

A handwritten signature in black ink, appearing to read "JDB", followed by a long horizontal flourish.

James D. Berkley  
Attorney-at-Law for  
MITCHELL SILBERBERG & KNUPP LLP

JDB  
Enclosure



Copyright Agent  
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## EXHIBIT A

